

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

v.

BLUE SKY VISION, LLC,

Defendant.

Case No. 1:20-cv-285-PLM-RSK
Honorable Paul L. Maloney

CONSENT DECREE

The United States Equal Employment Opportunity Commission (“Commission” or “EEOC”) filed this action against Blue Sky Vision, L.L.C., to enforce the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101-17. The Commission alleges that Blue Sky Vision violated the ADA by placing Dr. Randall Jansma (“Jansma”) on a leave of absence because it regarded him as disabled, subjecting Jansma to an unlawful medical inquiry, and terminating Jansma’s employment because it regarded him as disabled. Blue Sky Vision denies the allegations.

The Commission and Blue Sky Vision agree that this action should be resolved by entry of this Consent Decree. This Consent Decree shall be a final and binding settlement in full disposition of the claims arising out of the Complaint filed by the Commission on behalf of Jansma. The Court therefore finds, based on the pleadings and the record as a whole, that (1) the Court has jurisdiction

over the parties and the subject matter of this action, (2) entry of this Consent Decree will advance the purposes and provisions of the ADA, and (3) this Consent Decree resolves all disputed matters and claims in controversy in this lawsuit as provided in the paragraphs below.

Therefore, it is hereby ORDERED, ADJUDGED AND DECREED:

NON-DISCRIMINATION AND NON-RETALIATION

1. Blue Sky Vision shall not require its employees to submit to medical examinations, or respond to medical inquiries or sign medical releases that are not job-related and consistent with business necessity.
2. Blue Sky Vision shall not terminate a qualified individual with a disability because the employee is disabled within the meaning of the ADA.
3. Blue Sky Vision shall not retaliate in any way against any person because he or she opposed any practice declared unlawful by the ADA, or because of the filing of a charge, giving of testimony, or assisting or participating in any manner in any investigation, proceeding or hearing related to the ADA.

MONETARY RELIEF

4. Within thirty (30) days after entry of the Consent Decree by the Court, Blue Sky Vision shall pay Jansma the total sum of \$67,590. Of this monetary payment, \$27,590 shall be considered back pay, \$20,000 shall be considered contingent payments, and \$20,000 shall be considered compensatory damages. Blue Sky Vision shall issue a W-2 for the amount designated as back pay, less appropriate taxes and withholdings, and a 1099-MISC for the remaining amount, in the ordinary course of business. Blue Sky Vision shall not deduct the amount of the employer's share of any costs, taxes, or social security payments required by law to be paid by the company.

Payment shall be mailed to Jansma at the address provided by counsel for the Commission. A copy of each check shall be mailed to Kenneth L. Bird, c/o Karen L. Brooks, Trial Attorney, EEOC, 477 Michigan Avenue, Room 865, Detroit, Michigan 48226 and shall also be sent via email to monitoring-eeoc-ndo@eeoc.gov.

EMPLOYMENT POLICIES AND PRACTICES

5. Within ninety (90) days of the entry of this Consent Decree, Blue Sky Vision shall prepare a written policy that prohibits discrimination against employees with disabilities and send a copy to the Commission for review. The policy shall include a reference to the ADA's prohibitions against discrimination based on disability; set forth a procedure for making and processing requests for reasonable accommodations for qualified individuals with disabilities; and set forth a procedure for requesting medical examinations and making medical inquiries of current employees. This procedure shall require Blue Sky Vision to determine whether the examination or inquiry is job-related and consistent with business necessity. The policy shall be mailed to the United States Equal Employment Opportunity Commission, Kenneth L. Bird, Regional Attorney, c/o Karen L. Brooks, Trial Attorney, 477 Michigan Avenue, Rm. 865, Detroit, Michigan 48226 and e-mailed to monitoring-eeoc-ndo@eeoc.gov. Blue Sky Vision may presume that the policy is approved unless contacted by the Commission within twenty-one (21) days of submission.

6. Blue Sky Vision (which is defined to include the "partner entities" referenced in Hamilton Deposition Exhibit 1, pg. 3) shall distribute its Non-Discrimination Policy to its employees by e-mail within seven days (7) of receiving the Commission's approval. The Non-Discrimination Policy must be included in the Blue Sky Vision employee handbooks.

TRAINING

7. Within one hundred twenty (120) days after entry of this Consent Decree , Blue Sky Vision shall provide training on the provisions of the ADA. The training will be provided to Blue

Sky Visions's officers, human resources personnel, supervisors, managers and clinical directors.

Sometime between January 1, 2023 and April 30, 2023, an additional training will be provided to Blue Sky Vision's human resources personnel, supervisors and managers and clinical directors.

8. The subject matter of the training shall include the ADA's prohibition against disability-based discrimination, the employer's obligation under the ADA to provide reasonable accommodations for qualified individuals with disabilities, and the ADA's prohibition against unlawful medical examinations and inquiries. Training may be provided through a remote platform as long that platform allows for tracking of attendance.

9. No later than 14 days prior to the training sessions, Blue Sky Vision shall present the training materials to the Commission for review and approval. Blue Sky Vision may presume that the training materials are approved unless contacted by the Commission within seven (7) days of submission.

10. Within 30 days after the conclusion of the training, Blue Sky Vision shall provide the Commission with written certification that such training was provided and the list of attendees. The training materials, certification and attendance list shall be mailed to the United States Equal Employment Opportunity Commission, Kenneth L. Bird, Regional Attorney, c/o Karen L. Brooks, Trial Attorney, 477 Michigan Avenue, Rm. 865, Detroit, Michigan 48226 and e-mailed to monitoring-eeoc-indo@eeoc.gov.

NOTICE

11. Blue Sky Vision shall post the Notice (attached as Exhibit A) in a conspicuous place where employee notices are posted at all of Blue Sky Vision's partner entities. The Notice shall remain posted throughout the term of the Decree. Should the Notice become defaced, marred or otherwise made unreadable, Blue Sky Vision will post a readable replacement copy in the same manner as soon as practicable.

12. Within fourteen (14) days after posting the Notice, Blue Sky Vision will provide the Commission with written certification that the company posted the Notice. The certification shall be mailed to the United States Equal Employment Opportunity Commission, Kenneth L. Bird, Regional Attorney, c/o Karen L. Brooks, Trial Attorney, 477 Michigan Avenue, Rm. 865, Detroit, Michigan 48226 and e-mailed to monitoring-eeoc-indo@eeoc.gov.

DURATION

13. Absent extension by the Court, this Decree shall expire two (2) years after the date on which it was entered by the Court without further action by the parties.

JURISDICTION, DISPUTE RESOLUTION AND COMPLIANCE

14. This Court shall retain jurisdiction over this action for the duration of this Decree, and shall have all equitable powers, including injunctive relief, to enforce this Decree.

15. Upon motion of the EEOC, the Court may schedule a hearing for the purpose of reviewing compliance with this Decree. The parties shall engage in a good faith effort to resolve any dispute as to compliance prior to seeking review by the Court, and the EEOC shall be required to give Blue Sky Vision fourteen (14) days' notice before moving for such review. The EEOC may conduct written discovery under the Federal Rules of Civil Procedure for purposes of determining compliance with this Decree.

16. Should the Court determine that Blue Sky Vision has not complied with any part of this Decree, the Court may award the Commission a penalty of up to \$200 a day until Blue Sky Vision has complied. The Court may enter an Order requiring the payment of such daily penalty. The Court may further order appropriate relief including extension of the Decree for the time necessary to remedy non-compliance, and attorney's fees and costs.

MISCELLANEOUS

17. Except as otherwise provided in paragraph 16, each party shall bear its costs and attorney's fees incurred in this action.

18. If any provision of this Decree is found to be unenforceable by the Court, only the specific provision in question shall be affected and the other provisions shall remain in full force and effect.

19. This Decree constitutes the entire agreement and commitments of the parties. Only the Court may modify this Decree.

20. The terms of this Consent Decree are and shall be binding upon Blue Sky Vision's present and future members, officers, directors, employees, creditors, agents, trustees, administrators, successors, representatives and assignees and affiliates. If Blue Sky Vision is sold in whole or in part, the buyer shall be notified and given a copy of this Decree.

**EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION**

/s/ Karen L. Brooks
KAREN L. BROOKS (IL 6285816)
477 Michigan Avenue, Rm. 865
Detroit, Michigan 48226
(313) 774-0011
Karen.Brooks@eeoc.gov

BLUE SKY VISION, LLC

/s/ Catherine A. Tracey (with consent)
CATHERINE A. TRACEY (P63161)
Miller Johnson
45 Ottawa Avenue, SW, Suite 1100
Grand Rapids, Michigan 49503
(616)-831-1792
traceyc@millerjohnson.com

IT IS SO ORDERED:

Dated: February 18, 2022

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge

EXHIBIT A

EMPLOYEE NOTICE

Posted pursuant to the terms of a Consent Decree reached between the parties in EEOC v. Blue Sky Vision, LLC, filed in the United States District Court for the Western District of Michigan, Civil Action No. 1:20-cv-00285.

The Americans with Disabilities Act, which is a federal law, prohibits employers from discriminating against employees because they are disabled, or because they are perceived as disabled by their employers.

The Americans with Disabilities Act prohibits employers from making disability-related medical inquiries or requiring medical examinations during employment, unless such medical inquiries are job-related and consistent with business necessity. It is also unlawful for employers to discriminate against disabled employees in connection with hiring, promotion, termination, pay, job training and fringe benefits. The Americans with Disabilities Act further requires employers to provide reasonable accommodations to employees with disabilities to enable them to do their jobs.

Blue Sky Vision supports and complies with such federal laws in all respects.

Blue Sky Vision will not retaliate or take any action against employees because they have filed a charge of discrimination with the EEOC, reported an alleged violation under the law to the EEOC, or have given testimony, assisted, or participated in any investigation, proceeding, or hearing conducted by the EEOC.

Any person who believes that he or she may be a victim of illegal employment discrimination may contact the EEOC directly at 1-800-669-4000.

BLUE SKY VISION, LLC

By: _____

Date: _____